

reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the respondent—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the respondent intends to rely;

(3) May state any reasons why the respondent contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the respondent to act as respondent's representative, if any.

§ 25.10 Default upon failure to file an answer.

(a) If the respondent does not file an answer within the time prescribed in § 25.9(a), the reviewing official may refer the complaint to the ALJ along with the proof of service, as provided in § 25.8(b).

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the respondent in the manner prescribed in § 25.8, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 25.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the respondent waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the respondent files motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the respondent from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the respondent can demonstrate extraordinary cir-

cumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the respondent an opportunity to answer the complaint.

(g) A decision of the ALJ denying a respondent's motion under paragraph (e) of this section is not subject to reconsideration under § 25.38.

(h) The respondent may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the respondent files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the respondent's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the respondent's failure to file a timely answer, the authority head shall remand the case of the ALJ with instructions to grant the respondent an opportunity to answer.

(l) If the authority head decides that the respondent's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 25.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 25.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the respondent in the manner prescribed by § 25.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

§ 25.13

- (b) Such notice shall include—
 - (1) The tentative time and place, and the nature of the hearing;
 - (2) The legal authority and jurisdiction under which the hearing is to be held;
 - (3) The matters of fact and law to be asserted;
 - (4) A description of the procedures for the conduct of the hearing;
 - (5) The name, address, and telephone number of the representative of the Government and of the respondent, if any; and
 - (6) Such other matters as the ALJ deems appropriate.

§ 25.13 Parties to the hearing.

- (a) The parties to the hearing shall be the respondent and the authority.
- (b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 25.14 Separation of functions.

- (a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—
 - (1) Participate in the hearing as the ALJ;
 - (2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or
 - (3) Make the collection of penalties and assessments under 31 U.S.C. 3806.
- (b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.
- (c) The reviewing official shall, after consulting with the Inspector General, designate the representative for the Government, who shall be an attorney with either the Office of General Counsel or the Office of the Inspector General. The reviewing official's decision is final.

§ 25.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any mat-

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ter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 25.16 Disqualification of reviewing official or ALJ.

- (a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.
- (b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.
- (c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.
- (d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.
- (e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.
- (f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.
- (2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.
- (3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 25.17 Rights of parties.

- Except as otherwise limited by this part, all parties may—
- (a) Be accompanied, represented, and advised by a representative;
 - (b) Participate in any conference held by the ALJ;